

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

BRIAN J. STRETCH (CSBN 163973)
Chief, Criminal Division

PATRICIA J. KENNEY (CSBN 130238)
Assistant United States Attorney

450 Golden Gate Avenue
San Francisco, CA 94102
Telephone: 415.436.6857
Facsimile: 415.436.7234
Email: patricia.kenney@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
APPROXIMATELY \$57,378 IN UNITED
STATES CURRENCY,
Defendant.
KAP S. SIMS,
Claimant.

No. 08-5023 MMC

STIPULATION AND ORDER STAYING
THE INSTANT CASE PENDING
RESOLUTION OF THE CRIMINAL CASE

The parties agree, subject to the Court's approval, that the instant case be stayed pursuant to 18 U.S.C. § 981(g), pending resolution of *United States v. Sims*, No. 08-CR-0443 MMC. See Notice of Related Cases, filed February 11, 2009. Although the Honorable William S. Alsup had scheduled a case management conference for March 5, 2009 at 3:00 p.m., this Court's related case order took that CMC of calendar. See Related Case Order, entered February 18, 2009. The parties agree, subject to the Court's approval, that should the Court enter a stay of this civil forfeiture case that there is no need to reschedule a CMC until the criminal case is resolved.

1 Section 981(g) authorizes the Court to stay an action if it determines that civil discovery
2 would adversely affect the ability of the Government to conduct a prosecution of a related
3 criminal case. It also authorizes a claimant who is a defendant in a related criminal action to
4 request a stay of the civil forfeiture action if it would "burden the right of the claimant against
5 self-incrimination in the related investigation or case." 21 U.S.C. § 981(g)(1), (2).

6 Based on the following, the parties agree that both prongs of Section 981(b) are satisfied
7 and a stay is warranted. On July 8, 2008, the grand jury indicted Earl Harrell, Sims, II (SIMS)
8 for events occurring to and including June 19, 2008 when SIMS arrived at San Francisco
9 International Airport with \$57,378 in United States Currency. Subsequently, on November 4,
10 2008, the United States filed a civil action against the same \$57,378.

11 Both cases arise out of the same events and transactions. More specifically, the grand
12 jury charged SIMS – based on events occurring up to and including June 19, 2008 when SIMS
13 flew into San Francisco International Airport carrying \$57,378 in United States currency – with
14 violations of 21 U.S.C. § 846 (conspiracy to commit narcotics offense); 18 U.S.C. § 1028(a)(3)
15 (unlawful possession of false identification documents); 18 U.S.C. § 1028A(a)(1) (aggravated
16 identity theft) for events which occurred on . In addition, the grand jury included forfeiture
17 allegations in the indictment which gives SIMS notice that the United States intended to request
18 forfeiture of the \$57,378 as part of his sentence. As to the civil case, on November 4, 2008, the
19 United States filed a civil forfeiture action against the same \$57,378. As stated, the United States
20 filed a civil forfeiture action against the civil defendant \$57,378 – seized from SIMS at the San
21 Francisco International Airport – based on the totality of the circumstances set forth in the civil
22 Complaint for Forfeiture which allegations make the \$57,378 subject to forfeiture under
23 21 U.S.C. § 881(a)(6). The United States submits that basis for the stay is apparent based on the
24 face of the Indictment in the criminal case and the face of the civil Complaint for Forfeiture, and
25 thus no *in camera* declarations are necessary. 21 U.S.C. § 981(g)(5).

26 ///

27 ///

1 Accordingly, the parties request the Court to stay the instant case and, following the
2 resolution of the criminal case, to re-schedule a case mangement conference, if necessary.

3
4 IT IS SO STIPULATED:

JOSEPH P. RUSSONIELLO
United States Attorney

5
6 Dated: February 18, 2009


PATRICIA J. KENNEY
Assistant United States Attorney
Attorney for the United States

7
8
9 LAW OFFICES OF ALEX KESSEL

10 Dated: February 20, 2009


ALEX KESSEL
Attorney for Claimant Kap S. Sims

11
12
13
14
15 UPON CONSIDERATION OF THE FOREGOING STIPULATION, IT IS BY THE
16 COURT ON THIS 24th DAY OF February, 2009;

17 ORDERED THAT THE INSTANT CASE BE, AND HEREBY IS, STAYED UNTIL
18 FURTHER ORDER OF THE COURT.

19
20 
HONORABLE MAXINE M. CHESNEY
United States District Judge